



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE  
DIRECTOR

October 9, 1990  
AO-90-31

Mary Lou Murzyn  
Town Clerk  
Town House  
23 Green Street  
Kingston, MA 02364

Dear Ms. Murzyn:

This letter is in response to your request for an advisory opinion.

You have stated that as town clerk you are anticipating a recall affidavit will be filed to initiate the process of recalling an elected official.

Chapter 297 of the Acts of 1988 details the process by which a holder of elective office may be recalled therefrom by the registered voters of the town Kingston. In summary, 100 registered voters must file an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for the recall. Once the affidavit is filed with the clerk, a recall petition is prepared and issued, and must be signed by at least 20% of the registered voters in the town. If a sufficient number of voters sign the petition, an election is scheduled at which the question of the recall is decided and a candidate is elected to fill the position vacated if the recall is successful. An officer sought to be removed by recall may be a candidate for the vacated position.

You have posed a series of questions, for which we supply answers as follows:

1. Must a group advocating a recall petition file as a political committee? If so, at what stage is this done? Would they then be required to file the 8th day and the 30th day reports (required by section 18(e) of M.G.L. c.55)?

The first step in our analysis must be to determine whether the campaign finance law is applicable to a recall election. A recall election, as detailed in Chapter 297 of the Acts of 1988, contains elements of both an election at which a referendum question is submitted to the voters and at which candidates are elected. The campaign finance law pertains to any contribution made "to an individual, candidate, political

committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters . . . " Likewise, the campaign finance law pertains to any expenditure made "by an individual, candidate, or political committee, or a person acting on behalf of said individual, candidate, or political committee, for the purpose of influencing the nomination or election of said individual or candidate . . . or for the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters . . . " It is therefore the opinion of this office that the campaign finance law is applicable to a recall election.

The second step in our analysis is to ascertain at what point in the recall process the campaign finance law becomes applicable. This office has stated that any contributions or expenditures made to originate an initiative petition will be considered to have been made in order to influence or affect a question submitted to the voters, and therefore subject to the provisions of M.G.L. c.55. The office has further stated that "the act of origination in each instance shall be considered as the first step necessary to commence the process." See Interpretative Bulletin, OCPF-IB-108, "Disclosure and Reporting of Contributions and/or Expenditures Related to Ballot Questions." It is the opinion of this office that in the case of a recall petition the act of origination should be considered the drawing up and signing of an affidavit asking for a recall by 100 registered voters. Therefore, any monies which are raised and/or spent in connection with obtaining the signatures of the 100 registered voters on the affidavit will be subject to the provisions of M.G.L. c.55.

The next step in our analysis is to determine what persons or groups are subject to the provisions of the campaign finance law. Section 1 of M.G.L. c.55 defines a political committee as "any committee, association, organization or other group of persons, including a national, regional, state, county, or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . . or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters."

The policy of this office has long been that if a group solicits any money or other thing of value for a political purpose, such group is functioning as a political committee and must organize as such. See, Interpretative Bulletin OCPF-IB-105. It is therefore the opinion of this office that any group which is raising or spending money in connection with the gathering of voter signatures for an affidavit requesting a

recall election (or at any time after such affidavit is filed with your office) is functioning as a political committee under the provisions of M.G.L. c.55.

The last step in our analysis must be to determine whether a recall election is an election of a candidate or referendum question submitted to the voters. As we observed previously, the process detailed in Chapter 297 of the Acts of 1988 indicates that a recall election contains elements of both. It is the opinion of this office that because stricter limits are placed on activities surrounding a candidate election under the campaign finance law (because of the public's interest in preventing corruption or the appearance thereof in such elections), a recall election should be viewed a candidate election.

Any group raising or expending money in connection with the recall election would therefore be required to file as a political committee organized on behalf of candidates (a so-called "PAC") with your office, subject to the filing requirements specified in sections 18(e) and 18(b) of M.G.L. c.55. To the extent such committee is aligned with a particular candidate, i.e., acting in cooperation or consultation with such candidate, candidate's committee or any agent of such candidate or committee, such committee would be subject to the contribution limitations (e.g., \$1,000 per candidate) set forth in section 6 of M.G.L. c.55.

2. Is the person being recalled, and who is subsequently a candidate for re-election, also obligated to file the 8th day and 30th day finance reports?

Pursuant to our analysis that a recall election should be considered a candidate election, it is the opinion of this office that the person being recalled and who is subsequently a candidate for re-election, is subject to the requirements of M.G.L. c.55 as a person who seeks nomination or election to public office.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours, .

*Mary F. McTigue*

Mary F. McTigue  
Director

MFM/wp